## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEVE L. HUGHES, Plaintiff,	)	
vs.	)	Civil No. 4:13-CV-78-FHM
CAROLYN W. COLVIN,	)	
Acting Commissioner,	)	
Social Security Administration,	)	
Defendant.	)	

## **OPINION AND ORDER**

The court hereby grants Defendant's Unopposed Motion for Voluntary Remand Pursuant to Sentence Four of 42 U.S.C. § 405(g) (#17). Accordingly, the court hereby reverses the final decision of the Commissioner and remands the case to the Commissioner for further proceedings. Under sentence four of 42 U.S.C. § 405(g), a federal district court has the power "to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner . . ., with or without remanding the cause for a rehearing." *See Shalala v. Schaefer*, 509 U.S. 292, 296-97 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 97-98 (1991).

Remand of this case is necessary because the Administrative Law Judge (ALJ) deviated from Tenth Circuit caselaw by finding Plaintiff not disabled at step five, relying on the Medical-Vocational Rules, without first explicitly addressing the agency's borderline-age regulation. Upon remand, the ALJ will afford Plaintiff the opportunity for a *de novo* hearing and render a new decision in accordance with the applicable caselaw and regulations. The ALJ will, if

needed, obtain additional evidence from a vocational expert regarding the existence of jobs in significant numbers in the national economy that Plaintiff can perform.

IT IS SO ORDERED this 30<sup>th</sup> day of September, 2013.

Frank H. Mc Carthy FRANK H. McCARTHY

UNITED STATES MAGISTRATE JUDGE